

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 20-10038-01-JWB

ROGER MOSS,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the government's motion in limine (Doc. 92.) Defendant has not filed a response and the deadline for doing so has passed. For the reasons stated herein, the government's motion (Doc. 92) is GRANTED.

The government requests this court limit Defendant's "presentation of evidence or argument to the jury regarding any interviews or statements made by the defendant to third parties unless elicited" by the government during its presentation of evidence. (Doc. 92 at 1.) Specifically, the government contends "the defense should not offer the recording, transcript, or a summary of the defendant's January 21 statement to the jury unless" Defendant testifies and is subjected to cross-examination. (*Id.* at 2.) Defendant does not respond to this contention.

Hearsay is an inadmissible out-of-court statement offered into evidence to prove the truth of the matter asserted. Fed. R. Evid. 801(c). However, out-of-court statements made by a party and used against that party are not hearsay. Fed. R. Evid. 801(d)(2). Thus, while the government may choose to use Defendant's out-of-court statements against him, Defendant may not generally introduce his own out-of-court statements through other witnesses in order to establish the truth of

the matter contained in those statements. *See United States v. Savaiano*, 843 F.2d 1280, 1298 (10th Cir. 1988). Accordingly, absent some exception to the hearsay rule, Defendant will not be permitted to elicit testimony from officers concerning his post-arrest statements on January 21, 2020, unless and until he testifies and makes himself subject to cross-examination.

Accordingly, the government's motion in limine is GRANTED.

IT IS SO ORDERED this 8th day of December, 2021.

s/ John W. Broomes
JOHN W. BROOMES
UNITED STATES DISTRICT JUDGE